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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

41

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: JUN 12 2004

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. The decision was based on adverse information relating to the applicant's claim of employment for [REDACTED]. It was also based on a finding that the applicant had not been in the United States until after the eligibility period.

On appeal, the applicant claims he had engaged in qualifying employment during the required period. He provides additional documentation.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Immigration and Nationality Act and not ineligible under 8 C.F.R. § 210.3(d). See 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. See 8 C.F.R. § 210.3(b).

The applicant, a citizen of Taiwan, claimed on his application to have engaged in about 150 man-days of qualifying agricultural employment for [REDACTED] from April to November 1985. He provided no indication that he ever worked in agriculture other than during the period required to qualify for temporary resident status.

In support of the agricultural claim, the applicant submitted a corresponding affidavit purportedly from [REDACTED] who indicated he was a crew leader at [REDACTED].

In attempting to verify the applicant's claimed employment, the facility director acquired information that seemingly contradicted the applicant's claim. According to the director, the owner of [REDACTED] stated that Gilbert Rocha did not work there during the requisite twelve-month period. The director further concluded that KCP's payroll records supported that premise.

On December 20, 1990, the applicant was advised in writing of the adverse information obtained by the director, and of the director's intent to deny the application. The applicant was granted thirty days to respond. Counsel responded by providing two statements from [REDACTED] a supervisor at [REDACTED] and an affidavit from farmer [REDACTED] indicating that [REDACTED] had indeed worked at [REDACTED] during the required period. The director nevertheless denied the application, noting that the new evidence did not indicate that *the applicant* worked at [REDACTED]. The director also focused on the fact that the applicant's prior file contained forms on which the officer who apprehended the applicant in 1987 indicated that, in the applicant's own words, his *only* entry into the United States had been on August 19, 1986.

On appeal, in an effort to show that he resided in the United States before August 19, 1986, the applicant furnishes photocopies of envelopes and a printout from the Social Security Administration. Two of the three photocopies of envelopes seem to show 1984 postmarks. The postmark on the third is illegible. Regardless, as the original envelopes have not been submitted, it is not possible to verify the authenticity of this evidence.

The photocopy of a social security printout shows a date of January 16, 1985. If authentic, this date may reflect the date a social security card was issued to the applicant.

Even if it were to be concluded that the applicant was in the United States in 1985, none of these documents indicate he was in the Kansas City area. The photocopied envelopes show addresses in Madison, Wisconsin and Westhampton Beach, New York.

Regarding the issue of whether [REDACTED] worked at [REDACTED] during the required period, the statements from [REDACTED] and [REDACTED] in conjunction with other documentation submitted in other [REDACTED] cases, establish that [REDACTED] did work at [REDACTED] during the requisite period. Nevertheless, the important determination to be made is whether *the applicant* worked at [REDACTED] then.

On appeal, the applicant claims that he never told any employees of the Immigration and Naturalization service that he entered the United States for the first time in 1987. The director had noted in the denial decision that the applicant had given *August 19, 1986* as his first and only entry date when he was processed as a deportable alien in September 1987. The applicant also states "In September of 1987 I could hardly speak any English whatsoever." It is noted that the photocopied envelopes seemingly addressed to the applicant in the United States in 1984 refer to him by his anglicized name [REDACTED]. Thus, the applicant's claim is that, although he lived in the United States from a least as early as 1984 and used the name Jack, he nevertheless hardly understood any English in late 1987. On the face of it, such a claim does not seem plausible. Furthermore, if the applicant hardly spoke English at that time, it is not clear how he could definitely know, almost four years later, what he had said and not said.

It is noted that the applicant has not provided any evidence, such as a passport or plane ticket, of a trip to the United States prior to his entry on August 19, 1986. He has not explained how he came to the United States, and has provided no information as to whether he was inspected upon arrival.

When the applicant was processed as a deportable alien in September 1987, the filing period for those wishing to apply for special agricultural worker status had been open for three months. If the applicant had indeed worked in qualifying agricultural employment in the United States in 1985, he could and should have said so in September 1987, and he would have been allowed to apply for special agricultural worker status at that point. He made no such claim, and departed the United States voluntarily in order to avoid being deported.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. § 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. § 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers (AFL-CIO) v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

Although [REDACTED] in other cases, later provided a statement reiterating that he had truly supervised the alien whose application had been denied, he has not done so in this case. Nor has the applicant provided any affidavits from employees of non-profit organizations, who have clearly stated in other cases that they

provided outreach and nursing services for the migrant workers at KCP, and have named such workers. No other supervisors or coworkers have attested to the applicant's employment. Additionally, the applicant's past statements, and failure to explain the circumstances of his alleged earlier entry, cast great doubt upon his claim.

Under these circumstances, it is concluded that the applicant has failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The previous appeal is dismissed. This decision constitutes a final notice of ineligibility.